TAX EXEMPTION: REAL PROPERTY USED FOR PUBLIC PURPOSE

Carney v. Ohio Turnpike Comm'n,
167 Ohio St. 273, 147 N.E.2d 857 (1958);
Cleveland v. Board Tax App.,
167 Ohio St. 263, 147 N.E.2d 663 (1958).

The Board of Tax Appeals granted a request of the Ohio Turnpike Commission to have real property within the turnpike project—including service plazas—placed on the exempt tax lists for 1956, on the premise that the land title rested in the state, and that the property was devoted exclusively to a public purpose and exempt under Revised Code section 5537.20. The Cuyahoga county auditor objected to the inclusion of service plazas on the exempt tax lists and appealed to the Ohio Supreme Court. The court upheld the exemptions[1] as within article XII, section 2, of the Ohio Constitution, and within the applicable Ohio statutes.[2]

The majority found it necessary to interpret article XII, section 2, of the Ohio Constitution to determine the scope of power in the general assembly to exempt publicly owned property from taxation. The relevent portion of that section states:

> . . . *without limiting the general power* . . . to determine the subjects and methods of taxation *or exemptions therefrom,* general laws may be passed to exempt burying grounds, public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes, and public property used exclusively for any public purpose. (Emphasis added.)

The majority of the Ohio Supreme Court and the legislature are in direct conflict as to the meaning of this section, the court ruling that the legislature is limited to those enumerated exemptions, the legislature indicating it is not.[3]

The dispute can best be settled by looking at the historical context in which this constitutional amendment was adopted in 1929. For seventy-five years preceding 1929, article XII, section 2, directly limited exemptions of real and personal property. All property was to be taxed according to its true value, excepting only the enumerated classes. If

[1] Carney v. Ohio Turnpike Comm'n, 167 Ohio St. 273, 147 N.E.2d 857 (1958).

[2] OHIO REV. CODE §§5709.08 (1953), 5537.20 (1953), 5537.23 (1953).

[3] Youngstown Metropolitan Housing Authority v. Evatt, 143 Ohio St. 268, 55 N.E.2d 122 (1944); Dayton Metropolitan Housing Authority v. Evatt, 143 Ohio St. 10, 53 N.E.2d 896 (1944); Cullitan v. Cunningham Sanitarium, 134 Ohio St. 99, 16 N.E.2d 205 (1938); Cincinnati v. Lewis, 66 Ohio St. 49, 63 N.E. 588 (1902). See Caren, *Constitutional Limitations on the Exemption of Real Property from Taxation,* 11 OHIO ST. L.J. 207 (1950).

one purpose of the 1929 amendment was "to provide for a more flexible system of taxation,"[4] removal of limitations on the legislature's exemption power would tend to implement that policy;[5] restricting the exemption power to that existing prior to the amendment disregards that policy. In 1929 the electorate approved present article XII, section 2, which limited the amount of tax that could be levied on any property, and left everything else to the discretion of the general assembly.[6] In *Struble v. Davis*,[7] the court in the opinion accepted that interpretation.

> As amended the constitution itself now provides that the enumeration of certain classes of property which may be exempted does not take away or limit authority of the legislature to make other exemptions.

By 1944 the court restricted this interpretation of the constitutional amendment, and in *Youngstown Metropolitan Housing Authority v. Evatt*[8] the court distinguished the *Struble* case as involving only *personal* property. Exemptions of real property, the court insisted, had always been limited to those enumerated exemptions and were not changed by the 1929 amendment. The court summed up its conclusions as to the exemption power in paragraph two of the syllabus of *Zangerle v. Cleveland*.[9]

> The power of the General Assembly to exempt real property from taxation is limited to the kinds and classes enumerated in Section 2, Article XII of the Constitution.

Having raised the constitutional question, the court in the *Carney* case examined the relevent statutes affecting the case. Revised Code section 5709.08, exempting from taxation real and personal property owned by the state when used exclusively for a public purpose, was passed pursuant to the constitutional grant of authority. This statute itself is capable of great expansion or contraction depending on the court's view of what is "exclusively for a public purpose."[10]

Two statutes specifically relating to turnpike projects were also in-

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[4] This purpose was stated in the proposal submitted to the electorate by the 88th General Assembly. See Caren, *supra* note 3, at 209.

[5] Cleveland v. Board Tax App., 153 Ohio St. 97, 119, 91 N.E.2d 480 (1950) (dissent).

[6] Cleveland v. Board Tax App., *supra note* 5, at 116, 91 N.E. 2d at 489 (dissent); Board Education v. Board Tax App., 149 Ohio St. 564, 80 N.E.2d 156 (1948); State *ex rel* Struble v. Davis, 132 Ohio St. 555, 9. N.E.2d 684 (1937). 51 AM. JUR., *Public Bodies and Property* 557 (1944). Caren, *supra* note 3, at 209.

[7] *Supra* note 6, at 560, 9 N.E.2d at 686.

[8] *Supra* note 3.

[9] 145 Ohio St. 347, 61 N.E.2d 720 (1945).

[10] Cleveland municipal stadium held not exclusively for a public use, Cleveland v. Board Tax App. (1950), *supra* note 5; Municipal transportation system held not exclusively for a public use, Zangerle v. Cleveland, *supra* note 9; *overruled,* Cleveland v. Board Tax App., 167 Ohio St. 263, 147 N.E.2d 663 (1958); land of municipal airport leased to private corporation held exclusive public use, Toledo v. Jenkins, 143 Ohio St. 141, 54 N.E.2d 656 (1944).

volved. Revised Code section 5709.20 specifically exempts from taxation any turnpike project or any property *acquired or used by* the Ohio Turnpike Commission. To insure clarity of legislative intent Revised Code section 5537.23 was inserted, stating that the turnpike provisions, being necessary to the state's welfare, should be liberally construed. In line with past decisions the majority channels the factual questions into the constitutional and statutory exemptions of "public property used exclusively for any public purpose," despite the above statutory provisions expressly dealing with the turnpike.

Once the court determined that service plazas are "concomitants of turnpike operation" the conclusion exempting them with all other turnpike property naturally follows. The "exclusive" public character of the highway itself carries over into the plazas, even though privately owned and proprietory in nature. The majority supports its holding with *Toledo v. Jenkins*[11] where real estate incidental to the operation of a municipal airport was held devoted to a public use, even though rented to a private corporation for profit.

The concurring opinion of Judge Taft clearly points up the illogicalities of the majority ruling. Judge Taft recognizes that the profitable service plazas, though situated on state owned land, are not really "exclusively for a public purpose," viewing that phrase in the light of its prior judicial history.[12] The real users of the land are the private corporations with businesses situated thereon. He also expressed the conviction that article XII, section 2, gives the legislature *general powers to determine exemptions*, limited only by article I (Bill of Rights). If this historically correct interpretation is accepted the legislature can directly prescribe any reasonable exemption, whether of a governmental or a proprietory nature. Thus the paradox of fitting varied special exemption into the "exclusively for a public purpose" category would be unnecessary.

The expansion of the "public purpose" doctrine as portrayed in the *Carney* case continued into the municipal property area in *Cleveland v. Board Tax Appeals* (1958),[13] where exemption of Cleveland's municipal transportation system was approved, expressly overruling *Zangerle v. Cleveland.*[14] The *Cleveland* case can be viewed as the burial of the stagnant concept that state owned property of a proprietory nature could not be exempted from taxation. The court is now willing to hold that some municipally owned property of a proprietory nature is "public property used exclusively for any public purpose" under Revised Code section 5709.08. How far the court will carry this ruling beyond public

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[11] *Supra* note 10.

[12] Cleveland v. Board Tax App. (1958), *supra* note 10; Columbus v. County of Delaware, 164 Ohio St. 605, 132 N.E.2d 747 (1956).

[13] *Supra* note 10

[14] *Supra* note 9.

utility functions remains to be seen.[15]

Certainly the combined effect of the *Carney* and *Cleveland* cases creates doubt as to the status of marginal cases like *Cleveland v. Board Tax Appeals* (1950),[16] where a municipal stadium and adjacent parking lots were held outside the exemption area because rented out during a substantial part of the year. Judge Taft believes the majority conclusion in the *Carney* case overrules *Cleveland v. Board Tax Appeals* (1950), and the language of the latter *Cleveland* (1958) case, recognizing proprietory uses as no bar to exemption, seems to strengthen this conclusion. The profits, if any, received by a city from rental of its stadium and from concessionaires is not so different from profits received from rental of turnpike property for service plazas, or from profits received from a municipal transportation system. The latter is the clearest case of public use, the rental of turnpike property to private corporations the least clear. Logically a municipal stadium should fall between the two and also be exempt from taxation within the exclusive public use doctrine.

Nicholas L. Demos

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[15] See Stimson, *The Exemption of Publicly Owned Property From Taxation*, 8 U. CIN. L. REV. 32 (1934) for complete discussion on exemption of municipal industries.

[16] *Supra* note 5.